

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 26, 2005

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Azevedo, Galang, Lalwani, Mandal, Mohsin and Williams
Absent: Garcia
Staff: Carrington, Duncan, Randisi and Rodriguez

**III
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Frank De Smidt, Rotary Club, invited the public to attend the Texas Holdem Tournament Casino Night that will be held on Saturday, November 5th from 6 to 11 p.m. Tickets are available on www.rotaryholdem.com.

**IV.
APPROVAL OF MINUTES
October 12, 2005**

Chair Williams called for approval of the minutes of the Planning Commission meeting of October 12, 2005.

Commissioner Lalwani noted under Roll Call, Commissioner Mohsin was ten minutes late, not Commissioner Lalwani.

Motion to approve the corrected October 12, 2005 minutes.

M/S: Mandal/Azevedo

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

There were no announcements from staff.

**VI.
CONFLICT
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

Chair Williams called for approval of the agenda.

**VII.
APPROVAL OF
AGENDA**

Staff had no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Mandal

AYES: 6

NOES: 0

**VIII.
CONSENT CALENDAR
Item Nos. 2 and 3**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

Chair Williams opened the public hearing on Consent Item Nos. 2 and 3.

There were no speakers from the audience.

Close the public hearing

Motion to continue Item No. 2 until December 14th and continue Item No. 3 to November 9th.

M/S: Lalwani/Azevedo

AYES: 6

NOES: 0

***2 "S" ZONE APPROVAL NO. SZ2005-3 AND USE PERMIT NO. UP2005-17:** A request for a multifamily residential development consisting of 147 condominium units and associated site improvements and includes deviations to setbacks, drive aisle width, parking space dimensions and open space requirements for the properties located at 1696 South Main Street and 75 Montague Expressway.

***3 USE PERMIT NO UP2005-18:** A request for a temporary sales office trailer adjacent to model homes for the KB Terra Serena development (both single family and town homes) located on the west side of South Abel Street.

IX. PUBLIC HEARING

**1. TIME EXTENSION
NO. TE2005-3, "S" ZONE
APPROVAL
AMENDMENT NOS.
SA2005-72 & 73, USE
PERMIT APPROVAL
AMENDMENT NOS.
UA2005-15 & 16**

Kim Duncan, Junior Planner, and Dennis Carrington, Senior Planner, presented a request for a one time 18-month time extension for a multi-family residential project (65 units) and modification of previously approved Conditions of Approval Nos. 50a (residential portion) and 51a (commercial portion) for the Hillview/Town Center intersection, located in the Town Center near the intersection of East Calaveras and North Milpitas Boulevard and recommended approval with the following modified condition that reads below:

50. and 51. a) Public Improvements - *Prior to any building permit issuance or map recordation (whichever occurs first), the developer shall:
Obtain design approval and bond for all necessary public improvements including but not limited to "Keep Clear" signing and striping at the intersection of Hillview/Town Center Drive, and all other identified improvements on the approved Traffic Impact Analysis report and Engineering Services Exhibit "S" (dated 2/1/2004), (except for the interim raised median modifications at Hillview/Town Center Drive intersection), water main, sewer main, fire hydrants, public utility relocation/removal/abandonment, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. These improvements must be installed within 18 months of the issuance of any building permits, unless delayed by agencies other than Milpitas, such as Caltrans.*

Commissioner Lalwani pointed out that that once people move into the new homes at the Town Center, there will be a back up of cars on Hillview Drive. Mr. Carrington said that staff is concerned about northbound Hillview using the left turn pocket so staff eliminated the northbound lanes. Traffic engineering staff was clear that they preferred this and it would be looked at over 5 years.

Commissioner Mohsin asked if the driveway near Mervyn's will be widened because of all of the traffic that will be generated with the new project and Mr. Carrington said no. Ms. Duncan added that there are no plans to widen the driveway and staff will continue to conduct surveys and monitor the driveway.

Commissioner Mohsin asked if the Commission could make suggestions at this time.

Mr. Carrington explained that at this time, staff is modifying the two conditions mentioned in the staff report and that if the Commission has any concerns about other conditions of approval, they could be addressed at a different time after they are legally advertised.

Commissioner Mandal asked what other ways could you get into the housing portion of the Town Center development. Ms. Duncan explained that the primary access to the Town Center is through the intersection off Town Center Drive and Calaveras Blvd

Commissioner Mandal asked how many housing units are in Town Center and Ms. Duncan said 65 units.

Commissioner Lalwani said that she has no problem with the time extension, however she would like the traffic engineer to come and make a presentation so the Commission could understand the traffic flow.

Vice Chair Galang asked if you could make a U-turn at the intersection of Hillview Drive and Calaveras Blvd. near Lyon's. Mr. Carrington said that it is very narrow to make a U-turn there. Vice Chair Galang said that he always makes a U-turn there because there is no sign. Ms. Duncan said that she would bring that to staff's attention.

Vice Chair Galang asked if Safeway's shopping carts would be collected on a regular basis. Ms. Duncan deferred the question to the applicant.

Eric Schwartz, Shapell, noted that they would have to meet with Safeway and find out what their shopping collection time would be and that he can't answer specifically.

Vice Chair Galang said that he doesn't want the Town Center to look like Wal Mart, which has shopping carts all over the parking lot.

Mr. Schwartz said that shopping carts are expensive and Safeway is very responsible vendor but he can't speak for them. He said that the time extension application is for the residential portion of the project and there are two different permits that were completed for the commercial and residential and doesn't know why the shopping carts information was included in the residential portion of the staff report.

Chair Williams asked if the traffic engineer did a study for the holiday periods at the Town Center. Mr. Carrington said that he doesn't believe it was undertaken and that their main concern was northbound Hillview, which they believe would be unsafe if narrowed to one through lane and are concerned about sideswipes and rear ends on northbound Hillview.

Chair Williams agreed with Commissioner Lalwani for traffic engineering staff to come back and make a presentation about the Town Center traffic flow.

Mr. Schwartz pointed out that there was an outside traffic study done by an outside agency when the original condition of approvals were created.

Chair Williams explained that there may not be any changes, however the Commission wants to make sure that all avenues are looked at.

Mr. Schwartz agreed with the Commission and said that Shapell is willing to do whatever the Commission wants them to do.

Chair Williams opened the public hearing.

There were no speakers from the audience.

Close the Public Hearing

Motion to close the public hearing.

M/S: Lalwani/Mandal

AYES: 6

NOES: 0

Motion to approve Time Extension No. TE2005-3, "S" Zone Approval Amendment Nos. SA2005-72 and 73, Use Permit Approval Amendment Nos. UA2005-15 and 16 with modified conditions no. 50 and 51 a.

2. PROGRESS REPORT ON LIBRARY DESIGN DEVELOPMENT

Mark Rogge, Principal Engineer, presented a PowerPoint presentation on the progress of the Library Design Development and the East Parking Garage Schematic Design and recommended note, receipt and file.

Commissioner Mandal asked what percentage of the library would be solar panels. Mr. Rogge said that it hasn't been worked out exactly. The solar panels will be sending power into the grid and will be making the most energy during daylight hours when the facility is open and will greatly reduce the PG&E bill. Although it will not satisfy 100% of the needs, the architects initially showed staff several examples of solar panels and staff will be looking at more opportunities for the solar panels in the future. While the solar panels are really expensive, the State has several programs that will cover 50% of the cost.

Commissioner Lalwani asked how one would enter the library parking garage from Calaveras Blvd. Mr. Rogge said that if you take the off ramp from Calaveras, it would take you to the library. Staff is looking into possibly adding a traffic light there and also at Carlo Street..

Chair Williams asked if the solar panels would be designed so that they could be easily replaced by newer technology. Mr. Rogge replied that the current solar panels do last a long time and that the solar panels are replaceable.

Chair Williams asked if there would be pole lighting or wall washing lighting on the library. Mr. Rogge explained that there will be more pedestrian style lighting and staff hasn't looked at wall washers yet however staff is taking advantage of the views towards the hills.

Chair Williams asked if the computer animations that Mr. Rogge showed in his presentation would be available to students at the library and Mr. Rogge said yes.

Commissioner Mohsin asked if there will be benches at the library and Mr. Rogge said there would be plenty of benches throughout the library.

Commissioner Mohsin suggested that there be a bus service available for high school students to travel directly to the library and Mr. Rogge said that staff will look into it.

Commissioner Lalwani asked how the Apton Plaza project has progressed which is located right next to the future library. Mr. Carrington said that the project was modified to be reduced to 98 units and changes to the elevations from 3 to 2 story and the commercial element was reduced to 3000 square feet and should be moving forward.

**3. "S" ZONE
APPROVAL NO. SZ2005-
14**

Commissioner Lalwani said that she hopes Apton Plaza moves in first because there will be too much construction noise going on for the residents. Mr. Rogge agreed and said that the homeowners will probably need full disclosures.

Vice Chair Galang pointed out the parking garage drawings and asked what are the two lines between the parking stalls. Mr. Rogge said that those are dimension lines left over from the drawings.

Vice Chair Galang asked if there will be compact car parking in the library garage and Mr. Rogge said no.

Mr. Carrington presented a request for approval of a non tri-laminate asphalt composition roof for a duplex located at 1298 Chewpon Avenue and 1072 Hay Court and recommended denial of request for approval of a non tri-laminate 40- year ELK roof instead of the three-layered 7/8 inch Asphalt Composition tile required by Section XI-10-2.77 (a) of the Zoning Ordinance. Staff further recommends that the Planning Commission direct that the incorrect roofing material be removed and that the correct 7/8-inch roofing material be installed.

Commissioner Mandal asked if the home at Chewpon is the only property that has had a roof changed and Mr. Carrington said there have been other changes in the area.

Commissioner Mandal asked if all of the roofs conformed to the code and Mr. Carrington said yes.

Ron Andres, Applicant (roofing contractor), 559 Campbell Tech Parkway, said that the reason the homeowners are trying to achieve approval of the existing 40 year roof is that 75% of the work has already been completed. He recalled that in October, he pulled a permit to complete the work and during the process, a building inspector put a stop work order because the material was incorrect. There are 50 homes in the area and 2/3 of the homes have the same type of roof material that his clients are requesting be approved and they just wanted to be consistent with the neighborhood. He is concerned about the roofing material that the zoning ordinance states because the tri-laminate material is not 7/8 of an inch thick but is in reality 3/4 inch thick. He is also concerned about the material because there are only two companies that make tri-laminate that thick and they are both very expensive. At this point in time, it would be a hardship on the homeowners to remove the roofing material and replace it with the 7/8 inch tri-laminate so he is requesting that the Commission recommend approval.

Commissioner Lalwani asked when the ordinance requiring 7/8 inch tri-laminate roofing material was passed and Mr. Carrington said May 2003.

Commissioner Lalwani asked staff to verify what the applicant is saying about the thickness of the material being incorrect in the ordinance and Mr. Carrington said that the thickness of the material measures between 3/4 and 7/8 of an inch.

Chair Williams introduced the homeowners Joe Nicewonger and Antonia DeGuzman.

Commissioner Azevedo asked if the roofer took out the permits or the homeowners and Mr. Nicewonger said the roofer. Commissioner Azevedo asked who would have to pay for the new roof material if the application is denied and Mr. Andres said he would have to eat the cost of the material however the homeowners would have to pay the difference of the new material.

Commissioner Mandal asked the homeowners if they were aware that the material was not up to code and Mr. Nicewonger said they were not aware until the roofing was stopped.

Commissioner Mandal asked if there are other roofs in the area that have similar roofs and Mr. Nicewonger stated that the roofing they selected blends in with the neighborhood. He also talked to one of his neighbors and he used the same type of material.

Chair Williams asked if the other homes were re-roofed prior to May 2003 and Mr. Nicewonger said that a single home was re-roofed after May 2003.

Commissioner Lalwani said she is really concerned about safety and is also concerned about the homeowners going through financial hardship. She asked if the homes completed before May 2003 have safety problems. Mr. Carrington said that the roofs are not as safe and his understanding was that the ordinance was updated for safety reasons.

Commissioner Lalwani asked if there something the City can do before the roof is put on. Mr. Carrington said there is little a City can do once an ordinance has been changed, and staff has to enforce it. He recommends that the Commission not set precedent by allowing a non-standard roof because another person in the area will request the same thing.

Commissioner Lalwani suggested that maybe the roofer could come to the City and show a sample before buying the materials.

Mr. Nicewonger agreed with Commissioner Lalwani and said that after the permits are pulled have the building inspector approve the materials. He also understands where the City is coming from however he said this could have been prevented if the building inspector would have come out earlier to his property.

Commissioner Mandal asked if the City could tell the homeowners what type of brand to buy. Mr. Carrington replied that the City cannot say what certain brand to install.

Commissioner Mandal was also concerned and asked how the City could be proactive in making sure the applicant buys the right material.

Mr. Andres said that the City should have showed him a sample of the type of material to buy when he pulled the permit, not after, and is concerned that there are only two types of materials that are a true 7/8 of an inch thick.

Chair Williams recalled that the reason why the ordinance was changed back in May 2003 was because Milpitas was experiencing a number of fires of homes that had wood shingles. Staff conducted an extensive study and they came up with tri-laminate roofing that would be more safe.

Commissioner Mandal asked how many roofing permits are pulled in Milpitas per year. Mr. Carrington said that there are approximately 17,000 homes in Milpitas, so there could be about 500 to 1000 new roofs per year.

Commissioner Mohsin was concerned that the roofs might be too expensive for homeowners to afford and asked if staff could work that out. Mr. Carrington said that so far, no one has come to the City for assistance to pay for that roof.

Commissioner Lalwani reiterated that the City should be more specific about what they want and choose a specific brand rather than wasting time and money.

Commissioner Lalwani made a motion to approve "S" Zone Approval No. SZ2005-14. Commissioner Mohsin seconded the motion.

Vice Chair Galang asked what is the procedure to roof a home. Mr. Carrington explained that someone comes in and says they want to re-roof their home. Staff then looks at the zone designation to verify if they require a site and architectural review. Staff also looks if there are other alternatives and in this case, there were none. The applicant's roof required a 7/8 inch thick tri-laminate roof. Staff would then approve or deny the application.

Vice Chair Galang asked if the City always inspects re-roofs. Mr. Carrington explained that the building inspector is always bouncing from job and job and that they are driving all over the city so it is difficult to be there at the exact time someone is starting to install a roof.

Commissioner Mandal felt that the City needs to be more proactive and should look at their procedures.

Chair Williams said that he would vote to deny the motion because he understands the history of the ordinance and is concerned about setting precedent. Many people need to replace their roofs, and if the Commission denies the application, the homeowners could appeal to Council. He said that he sympathizes with the homeowners, however the contractor is an expert in his trade and should know the products required by the community.

Commissioner Azevedo agreed with Chair Williams because he thought that the contractor should have showed Building staff what type of material he was going to use on the house but he did not, however he does sympathize with the homeowners.

Vice Chair Galang said that staff should show a sample of the material before issuing a permit.

Motion to approve "S" Zone Approval No. SZ2005-14.

M/S: Lalwani/Mohsin

AYES: 3 (Lalwani, Mohsin and Mandal)

NOES: 3 (Williams, Galang and Azevedo)

Motion fails.

Mr. Nicewonger was really concerned about what this meant for his property. He said that he wanted his roof to blend in with the neighborhood and said that he has incurred leaks in his house because of the stop work order on his roof.

Chair Williams said that he will step out of the box and recommend approval of the project. He reiterated Commissioner Lalwani's comments that this would not set a precedence.

Motion to approve "S" Zone Approval No. SZ2005-14 and to have staff take proactive steps to make sure this doesn't happen again.

M/S: Mandal/Williams

AYES: 4 (Williams, Lalwani, Mohsin and Mandal)

NOES: 2 (Galang and Azevedo)

**X.
ADJOURNMENT**

The meeting was adjourned at 9:07 p.m. to the next regular meeting of November 9, 2005.

Respectfully Submitted,

Dennis Carrington
Senior Planner

Veronica Rodriguez
Recording Secretary

APPROVED
October 26, 2005